

The record in this case consists of the documents on file with the Division of Workers Compensation including the transcript of the Preliminary Hearing held on April 26, 1994; the evidentiary deposition of Stephen D. Hoffman, dated April 28, 1994; the evidentiary deposition of Karl Otto, dated April 28, 1994; and, the exhibits attached thereto.

ISSUES

This is an Application for Review filed by the claimant requesting the Appeals Board to review Administrative Law Judge John D. Clark's Preliminary Hearing Order of May 5, 1994, which denied the claimant's request for temporary total disability benefits from February 8, 1994 to April 19, 1994. In requesting this review, the claimant has attempted to frame as a jurisdictional issue the fact that the respondent herein alleged that it would have had an accommodated job for the claimant within his restrictions and it is argued this is one of the "certain defenses" intended to grant the Appeals Board jurisdiction to review a preliminary hearing order as set forth in K.S.A. 44-534a(a)(2).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the entire record and for purposes of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-534a gives the Administrative Law Judge the authority to either grant or deny the request for payment of temporary total disability compensation. The Appeals Board does not have jurisdiction to review such a decision unless one of the following issues is disputed: a) whether the employee suffered an accidental injury; b) whether injury arose out of and in the course of the employee's employment; c) whether notice is given or claim timely made; and, d) whether certain defenses apply.

In the present case, the claimant alleges that the respondent's claim that it would have had a job for the claimant is one of the certain defenses intended to grant the Appeals Board jurisdiction to review a preliminary hearing order as set forth in K.S.A. 44-534a(a)(2).

The Appeals Board finds that the Administrative Law Judge had the authority to deny temporary total disability compensation to the claimant pursuant to K.S.A. 44-534a. The Appeals Board further finds that the claimant's forgoing alleged defense is not one of the "certain defenses" intended to give the Appeals Board jurisdiction to review a preliminary hearing order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's Preliminary Hearing Order dated May 5, 1994, denying claimant's request for temporary total disability benefits from February 8, 1994 through April 19, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Dale V. Slape, 1009 S. Broadway, Wichita, KS 67211
Cortland Clotfelter, 727 N. Waco, Suite 585, Wichita, KS 67203
Steven Foulston, PO Box 48128, Wichita, KS 67201
John D. Clark, Administrative Law Judge
George Gomez, Director